

1. Does the Board have jurisdiction to review a preliminary hearing order to determine a coverage issue between insurance entities?
2. If so, did Judge Avery err?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the parties' arguments, the Board finds and concludes it does not have jurisdiction to review a preliminary hearing order to determine an insurance coverage issue that does not go to the compensability of the claim. Consequently, respondent's insurance fund's appeal should be dismissed.

This is an appeal from a preliminary hearing order. Consequently, the Board's jurisdiction is limited. The Board is expressly granted jurisdiction to review preliminary hearing orders and findings that address the following issues:

- I. Did the worker sustain an accidental injury?
- II. Did the injury arise out of and in the course of employment?
- III. Did the worker provide the employer with timely notice and timely written claim?
- IV. Did the employer establish any defense that defeats the compensability of the claim?¹

In addition, the Board may review those preliminary hearing orders where the Judge has exceeded his or her jurisdiction or authority.²

The issue now presented to this Board is whether the alleged injury that claimant purportedly sustained during physical therapy for a work-related injury should be the responsibility of the insurance entity who was providing respondent with insurance coverage at the time of the initial work-related injury or, instead, the insurance entity who was providing respondent with insurance coverage at the time of the alleged physical therapy incident. But that issue does not fall within the Board's limited jurisdiction to review preliminary hearing orders. Consequently, the Board must dismiss this appeal.

¹ K.S.A. 44-534a.

² K.S.A. 2004 Supp. 44-551.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.³

WHEREFORE, the Board dismisses respondent and its insurance fund's appeal of the October 12, 2005, Order for Medical Treatment entered by Judge Avery.

Respondent and its insurance fund filed their application for review in this appeal under docket numbers 1,020,603 and 1,020,604. As it appears the appeal under docket number 1,020,604 was made in error, the Board dismisses that appeal.

IT IS SO ORDERED.

Dated this ____ day of December, 2005.

BOARD MEMBER

c: Bruce Alan Brumley, Attorney for Claimant
Anton C. Andersen, Attorney for Respondent and its Insurance Fund
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

³ K.S.A. 44-534a(a)(2).